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9 (*Exempt from Filing Fees Pursuant to Government Code § 6103*)

10 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

11

12 DOROTHEY HEIMBACH, individually and
13 as successor in interest to Anthony Silva,

Case No. 2:23-cv-01887-DJC-CSK

14 Plaintiff,

DEFENDANTS' TRIAL BRIEF

15 v.

Trial Date: January 5, 2026

16 STANISLAUS COUNTY; and JUSTIN
17 CAMARA, ZA XIONG, and ERIC
18 BAVARO, in their individual capacities,

19 Defendants.

20

21 Defendants COUNTY OF STANISLAUS, JUSTIN CAMARA, and ZA XIONG hereby submit the
22 following Trial Brief.

23 **I. SHORT STATEMENT OF FACTS**

24 On October 8, 2022, Deputies Camara and Xiong were assigned to uniformed bicycle patrol for
25 the Riverbank wine and cheese event. Mounted Units Deputies Bret Babbit and Lauren Romero
26 observed a subject (later identified as Anthony Silva) chasing after another subject with the apparent
27 intent to incite a fight and possibly under the influence. Reporting this over the radio, Deputies Camara
28 and Xiong respond. Deputy Camara orders Silva to turn around and place his hands behind his back.

1 Mr. Silva does not immediately comply; Deputy Camera grabs his wrist, turns him around and effected a
 2 take down without incident or injury, and is placed into handcuffs. Deputy Camera states Mr. Silva is
 3 now under arrest.

4 Mr. Silva is walked/escorted to a covered pavilion for a further search pursuant to arrest and
 5 processing. Deputy Bavaro arrives to assist. Deputies find plastic baggies of methamphetamine.
 6 Preparing for transport to jail, Deputy Xiong stands Mr. Silva up, says “Let’s go” and they barely take
 7 two steps when Mr. Silva turns around and says, “where’s my cash” and resists being pulled southward.
 8 Mr. Silva says aggressively “give my fucking hands back” and Deputy Xiong grabs his right arm. As
 9 Deputy Camara moves in for his left arm, Mr. Silva lowers his left shoulder and rams into Deputy
 10 Camara, committing a felony assault.

11 Deputies Camera and Xiong appear to slightly raise Mr. Silva’s arms up but then Silva crouches,
 12 then stands. Deputy Xiong tries to execute a leg sweep but ends up falling with Mr. Silva, who hits his
 13 head on the concrete. From the moment Silva says “give my fucking hands back” to when he hit his
 14 head, only 5 seconds elapsed. Mr. Silva says he is paralyzed. Deputies move Mr. Silva to sit at a table,
 15 getting him off the hot cement. An ambulance was called. Sgt. Hickman arrives to monitor.

16 II. SUMMARY OF POINTS OF LAW

17 1. Excessive Force

18 Claims of excessive force are analyzed under an objective reasonableness standard. *Graham v.*
 19 *Connor*, 490 U.S. 386, 388 (1989). This inquiry requires “a careful balancing of ‘the nature and quality
 20 of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing
 21 governmental interests at stake.” *Id.* (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)). In assessing
 22 the governmental interest in the use of force, courts consider a non-exhaustive list of factors, including
 23 “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the
 24 officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”
 25 *Graham*, 490 U.S. at 396. See also Ninth Circuit Model Instructions 9.25

26 Defendants contend they did not use excessive force in either detaining Anthony Silva or in the
 27 “take down”.

28 ///

1 **2. Right to Familial Association under the Fourteenth Amendments**

2 “[P]arents have a Fourteenth Amendment liberty interest in the companionship and society of
 3 their children.” *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010). The Ninth Circuit has
 4 recognized a similar right under the First Amendment. *Lee v. Cnty. of Los Angeles*, 250 F.3d 668, 685–
 5 86 (9th Cir. 2001). Courts assess both types of familial association claims using the same substantive
 6 legal standards. *Kaur v. City of Lodi*, 263 F. Supp. 3d 947, 973 (E.D. Cal. 2017). Officers violate a
 7 family member’s right to familial association when their conduct “shocks the conscience.” *Porter v.*
 8 *Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008). When officers have an opportunity to deliberate, their
 9 conduct shocks the conscience when they act with deliberate indifference. *Wilkinson*, 610 F.3d at 554.
 10 Proof of deliberate indifference requires a “showing that the officer ‘disregarded a known or obvious
 11 consequence of his action.’” *Nicholson v. City of Los Angeles*, 935 F.3d 685, 693 (9th Cir. 2019)
 12 (quoting *Patel v. Kent Sch. Dist.* 648 F.3d 965, 974 (9th Cir. 2011)). When an officer, however, must
 13 make “a snap judgment because of an escalating situation, his conduct may only be found to shock the
 14 conscience if he acts with a purpose to harm unrelated to legitimate law enforcement objectives.”
 15 *Wilkinson*, 610 F.3d at 554. Typically, “meritorious purpose to harm claims will involve evidence of
 16 ulterior motive or bad intent separate and apart from evidence of an unreasonable use of force.” *Nehad*
 17 *v. Browder*, 929 F.3d 1125, 1140 (9th Cir. 2019).

18 Defendants contend the rapidly evolving circumstances requires the purpose to harm standard,
 19 and deny their respective conduct shocks the conscience under either standard.

20 **3. Qualified Immunity for federal claims**

21 Qualified immunity gives government officials breathing room to make reasonable but mistaken
 22 judgments about open legal questions. When properly applied, it protects ‘all but the plainly
 23 incompetent or those who knowingly violate the law.’ *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011),
 24 quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1985). Whether a right is clearly established turns on
 25 whether it is “sufficiently definite that any reasonable official in the defendant’s shoes would have
 26 understood he was violating it.” *Nicholson v. City of Los Angeles*, 935 F.3d 685, 695 (9th Cir.
 27 2019). The plaintiff bears the burden of showing that the rights allegedly violated were clearly
 28 established. *Id.* at 1118. Generally, a plaintiff need not find a case directly on point, but existing

1 precedent must have placed the statutory or constitutional question beyond debate. *Ashcroft*, 563 U.S. at
 2 741. Qualified immunity is a question of law, not a question of fact. *Torres v. City of Los Angeles*, 548
 3 F.3d 1197, 1210 (9th Cir. 2008). Defendants contend qualified immunity applies.

4 **4. State law claims¹**

5 **a. Battery**

6 Battery claims are the state counterpart to federal civil rights claims for excessive force; in both
 7 the Plaintiff must prove the unreasonableness of the officer's conduct. (*Susa v. City of Lake Forest*
 8 (2002) 94 Cal.App.4th 1401, 1412-13.) Civil assault is generally defined as the unlawful attempt,
 9 coupled with the present ability, to commit violent injury on the person of another. (*Kisek v. Carpenter's Trust* (1983) 144 Cal.App.3d 222.) As against law enforcement, the standard for proving an
 10 assault/battery under California tort law as it is under § 1983 actions. (See *Edson v. City of Anaheim*
 11 (1998) 63 Cal.App.4th 1269, 1274-75).

13 **b. Negligence/Wrongful Death**

14 “To prove negligence, ‘a plaintiff must show that [the] defendant had a duty to use due care, that
 15 he breached that duty, and that the breach was the proximate or legal cause of the resulting injury.’” *L.F.*
 16 *by & through Brown v. City of Stockton*, No. 2:17-cv-01648-KJM-DB, 2020 WL 4043017, at *24 (E.D.
 17 Cal. July 17, 2020) “[D]uty is a critical element of negligence liability.” *Hayes v. Cty. of San Diego*, 57
 18 Cal. 4th 622, 629 (2013). The California Supreme Court has long recognized that peace officers have a
 19 duty to act reasonably when using force. *Id.* To determine reasonableness, California negligence law,
 20 like the Fourth Amendment’s reasonableness test, requires a consideration of the totality of the
 21 circumstances surrounding any use of force. *L.F.*, 2020 WL 4043017, at *24 (citing *Hayes*, 57 Cal. 4th
 22 at 629).

23 **7. Damages**

24 The basic purpose of a § 1983 damage award should be to compensate persons for injuries caused
 25 by deprivation of their constitutional rights. *Farrar v. Hobby*, 506 U.S. 103 (1992). Compensatory

27 ¹ Defendants note that in coordinating Joint Jury Instructions, Plaintiff did not include an instruction on the Bane Act. Thus,
 28 Defendants did not. Likewise, Plaintiff did not include a Bane Act on its verdict form, and thus, Defendants have not.
 Plaintiff's Trial brief did not address it as well. Accordingly, by these multiple omissions, Defendants submit Plaintiff has
 abandoned this claim. In reliance thereon, Defendants have therefore not included in this brief a section on the Bane Act.

1 damages may only be awarded for violation of § 1983 based on proof of an actual injury. Id.
 2 Compensatory damages are in regard to state law claims are those damages as will compensate the
 3 injured party for injuries sustained, under California law, making good or replacing the loss caused by
 4 the injury. *Berg v. First State Ins. Co.*, 915 F.2d 460 (9th Cir. 1990).

5 Regardless of the nature of number of legal theories advanced by a plaintiff, a plaintiff is not
 6 entitled to more than a single recovery for each item of potentially compensable damages. See
 7 *Tavaglione v. Billings*, 4 Cal.4th 1150 (1993).

8 **8. Affirmative defenses**

9 **a. Decedent had a duty to exercise due care and is guilty of comparative negligence**

10 Penal Code section 834a imposes a generalized duty to not resist arrest: "If a person has
 11 knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a
 12 peace officer, it is the duty of such person to refrain from using force or any weapon to resist such
 13 arrest." "In all actions for negligence resulting in injury to person or property,...damages awarded shall
 14 be diminished in proportion to the amount of negligence attributable to the person

15 **b. Defense of self or others**

16 Penal Code section 834a imposes a generalized duty to not resist arrest: "If a person has
 17 knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a
 18 peace officer, it is the duty of such person to refrain from using force or any weapon to resist such
 19 arrest." Defendants only used the amount of force that was reasonably necessary to protect themselves
 20 or others. (See Civ. Code, § 50; CACI 1304; *Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714,
 21 730-31.)

22 **c. Immunities**

23 Gov. Code, § 820.2 [a public employee is not liable for an injury resulting from his act or
 24 omission where the act or omission was the result of the exercise of discretion vested in him, whether or
 25 not such discretion be abused]; Gov. Code, § 820.4 [a public employee is not liable for his act or
 26 omission, exercising due care, in the execution or enforcement of any law].) Gov. Code § 820.8 [a
 27 public employee is not liable for acts of others.]

d. Failure to mitigate damages

Any failure to mitigate goes to the amount of damages owed. See e.g. *Resolution Trust Corp. v. BVS Development, Inc.*, 42 F. 3d 1206 (9th Cir. 1994); *Thrifty-Tel, Inc. v. Bezenek*, 46 Cal.App.4th 1559, 1568, 54 Cal. Rptr.2d 468 (1996) ("A plaintiff has a duty to mitigate damages and cannot recover losses [he] could have avoided through reasonable efforts.").

Respectfully submitted,

Dated: December 11, 2025

PORTR SCOTT
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By /s/ John R. Whitefleet
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